

SIKKIM



GOVERNMENT

GAZETTE

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

Gangtok

Friday 27th October, 2017

No. 521

**GOVERNMENT OF SIKKIM
LEGAL METROLOGY UNIT AND CONSUMER PROTECTION
FOOD & CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
PALZOR STADIUM ROAD,
GANGTOK-737101**

No. 11 /LMU & CP/FCS&CA

Dated: 24.10.2017

NOTIFICATION

In compliance with the directives of the Ministry of Consumer Affairs, Food and Public Distribution, Government of India vide its Notification G.S.R. No. 1013(E) & Dated: 26th October, 2016, the State Government hereby makes the following Guidelines namely: -

Short Title and Commencement:

1. (1) These Guidelines may be called the Sikkim State Direct Selling Guidelines, 2017.
- (2) They shall extend to the whole of Sikkim.
- (3) They shall come into force on the date of their publication in the Official Gazette.

Definitions :

2. (1) In these Guidelines, unless, the context otherwise requires:-
 - (a) "Act" means the Consumer Protection Act, 1986 (68 of 1986);
 - (b) "Consumer" shall have the same meaning as provided under the Consumer Protection Act, 1986;
 - (c) "Prospect" means a person to whom an offer or a proposal is made by the Direct Seller to join a Direct Selling opportunity;
 - (d) "Direct Seller" means a person appointed or authorized, directly or indirectly, by a Direct Selling Entity through a legally enforceable written contract to undertake direct selling business on principal to principal basis;
 - (e) "Network of Direct Selling" means a network of direct sellers at different levels of distribution, who may recruit or introduce or sponsor further levels of direct sellers, who they then support:

Explanation: 'network of direct selling' shall mean any system of distribution or marketing adopted by a direct selling entity to undertake direct selling business and shall include the multi-level marketing method of distribution;

- (f) "Direct Selling" means marketing, distribution and sale of goods or providing of services as a part of network of Direct Selling other than under a pyramid scheme:

Provided that such sale of goods or services occurs otherwise than through a "permanent retail location" to the consumers, generally in their houses or at their workplace or through explanation and demonstration of such goods and services at a particular place;

- (g) "Direct Selling Entity" means an entity, not being engaged in a pyramid scheme, which sells or offers to sell goods or services through a direct seller:

Provided that "Direct Selling Entity" does not include any entity or business notified otherwise by the Government for the said purpose from time to time;

- (h) "Goods" means goods as defined in the Sale of Goods Act, 1930 and "service" means service as defined in the Consumer Protection Act, 1986;

- (i) "Saleable" shall mean, with respect to goods and / or services, unused and marketable, which has not expired, and which is not seasonal, discontinued or special promotion goods and / or services;

- (j) "Cooling-off Period" means the duration of time counted from the date when the direct seller and the direct selling entity enter into an agreement under Clause 5 and ending with date on which the contract is to be performed and within which the direct seller may repudiate the agreement without being subject to penalty for breach of contract;

- (k) "Pyramid Scheme" means a multi layered network of subscribers to a scheme formed by subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, as a result of enrolment, action or performance of additional subscribers to the scheme. The subscribers enrolling further subscriber(s) occupy higher position and the enrolled subscriber(s) lower position, thus, with successive enrolments, they form multi-layered network of subscribers:

Provided that the above definition of a "Pyramid Scheme" shall not apply to a multi layered network of subscribers to a scheme formed by a Direct Selling Entity, which consists of subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, where the benefit is as a result of sale of goods or services by subscribers and the scheme/ financial arrangement complies with all of the following:-

- i) It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment/ enrollment of new participants.

- ii) It does not require a participant to purchase goods or services:-
 - a) for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers;
 - b) for a quantity of goods or services that exceeds an amount that can be expected to be consumed by, sold or resold to consumers.
- iii) It does not require a participant to pay any entry/ registration fee, cost of sales demonstration equipment and materials or other fees relating to participation.
- iv) It provides a participant with a written contract describing the "material terms" of participation;
- v) It allows or provides for a participant a reasonable cooling-off period to participate or cancel participation in the scheme and receive a refund of any consideration given to participate in the operations.
- vi) It allows or provides for a buy-back or re-purchase policy for "currently marketable" goods or services sold to the participant at the request of the participant at reasonable terms.
- vii) It establishes a grievances redressal mechanism for consumers, more particularly described in Clause 8 herein.

Explanation 1 – For the purposes of this proviso the term "material terms" shall mean buy-back or re-purchase policy, cooling-off period, warranty and refund policy.

- (l) "Money Circulation Scheme" has the same meaning as defined under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978;
- (m) "Remuneration System" means the system followed by the direct selling entity to compensate the direct seller which illustrates the mode of sharing of incentives, profits and commission, including financial and non-financial benefits, paid by the direct selling entity to the direct sellers, on a monthly or periodic or yearly basis or both, as the case may be.

This system, for every Direct Selling entity, shall:-

- i) have no provision that a direct seller will receive remuneration from the recruitment to participate in such direct selling;
- ii) ensure that direct sellers shall receive remuneration derived from the sale of goods or services;
- iii) clearly disclose the method of calculation of remuneration.
- (n) "State" includes a Union territory.

Conditions for setting up of Direct Selling Business :

- 3. (1) Every Direct Selling entity intending to carry out direct selling business subsequent to the publication of the notification in the Official Gazette, shall within 90 (ninety) days comply with the following set of conditions for the conduct of direct selling business; namely :-

It shall,–

- (a) be a registered legal entity under the laws of India;

- (b) provide a mandatory orientation session to all prospective direct sellers providing fair and accurate information on all aspects of the direct selling operation, including but not limited to the remuneration system and expected remuneration for newly recruited direct sellers;
- (c) provide accurate and complete information to prospective and existing direct sellers concerning the reasonable amount of remuneration opportunity, and related rights and obligations;
- (d) pay all dues and make with holdings from direct sellers in a commercially reasonable manner;
- (e) notify and provide a full refund or buy-back guarantee to every direct seller on reasonable commercial terms which can be exercised within a period of 30 (thirty) days from the date of the distribution of the goods or services to the direct seller;
- (f) notify and provide to every direct seller a cooling-off period which entitles such direct seller to return any goods/ services purchased by the direct seller during the cooling-off period;
- (2) The promoter or key management personnel should not have been convicted of any criminal offence punishable with imprisonment in last 5 (five) years by any Court of competent jurisdiction;
- (3) It shall have an office with identified jurisdiction of its operation in the State to enable the consumers and direct seller to acquaint themselves with price of products, return or replacement of products and efficient delivery of goods and services, and post-sale redressal of grievances.

**Conditions for
conduct of
Direct Selling
Business**

- 4. (1) Every Direct Selling entity shall comply with the following conditions:-
 - (a) It shall be the owner, holder, licensee of a trademark, service mark or any other identification mark which identifies the entity with the goods to be sold or supplies or services to be rendered.
 - (b) It shall issue proper identity document (s) to its Direct Sellers;
 - (c) It shall maintain proper records either manual or electronic of their business dealings, with complete details of their goods, services, terms of contract, price, income plan, details of direct sellers, including but not limited to enrolment, termination, active status, earning etc;
- (2) Every Direct Selling entity shall maintain a "Register of Direct Sellers" wherein relevant details of each enrolled Direct Seller shall be updated and maintained;
- (3) The details of Direct Sellers shall include and not be limited to verified proof of address, proof of identity and PAN;
- (4) It shall maintain proper and updated website with all relevant details of the entity, contact information, its management, products, product information, product quality certificate, price, complete income plan, terms of contract with direct seller and complaint redressal mechanism for direct sellers and consumers. The

website should have space for registering consumer complaints and should ensure that grievances are addressed within 45 (forty-five) days of making such complaints;

- (5) It shall provide to all direct sellers their periodic account/ information concerning, as applicable, sales, purchases, details of earnings, commissions, bonus and other relevant data, in accordance with agreement with the direct sellers. All financial dues shall be paid and any withholding made in a commercially reasonable manner;
- (6) It shall monitor the value of the purchases of all its Direct Sellers/ Distributors on a monthly basis and once the purchase value crosses the GST threshold; it must intimate the Direct Seller/ Distributor to pay the GST;
- (7) A Direct Selling Entity shall not: -
 - (i) use misleading, deceptive or unfair recruiting practices, including mis representation of actual or potential sales or earnings, in their interaction with prospective or existing direct sellers;
 - (ii) make any factual representation to a prospective direct seller that cannot be verified or make any promise that cannot be fulfilled;
 - (iii) present any advantages of direct selling to any prospective direct seller in a false or deceptive manner;
 - (iv) make or cause, or permit to be made, any representation relating to its direct selling business, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller which false or misleading;
 - (v) engage in, or cause or permit, any conduct that is misleading or likely to mislead with regard to any material particulars relating to its direct selling business, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller;
 - (vi) use, or cause or permit to be used, fraud, coercion, harassment, or unconscionable or unlawful means in promoting its direct selling practice, including remuneration system and agreement between itself and the direct seller, or to the goods or services being sold by itself or by the direct seller;
 - (vii) require its direct sellers to provide any benefit, including entry fees and renewal fees or to purchase any sales demonstration equipment or material in order to participate in its direct selling operations;
 - (viii) provide any benefit to any person for the introduction or recruitment of one or more persons as direct sellers;
 - (ix) require the direct sellers to pay any money by way of minimum monthly subscription or renewal charges;
- (8) Notwithstanding the distribution system adopted by a direct selling entity, the Direct Selling Entity shall be responsible for compliance of these Guidelines by any member of its network of direct selling, whether such member is appointed directly or indirectly by the Direct Selling Entity.

Conditions for Direct Selling Contract between Direct Seller / Distributor and Direct Selling Entity

5. (1) Every Direct Selling Entity shall execute a contract agreement, whether directly or indirectly, with Direct Sellers before enrolment:
- (2) The Agreement shall be provided in a manner consistent with section 10 of the Indian Contract Act, 1872.
- (3) In addition to the rights and obligations of parties to this agreement under these guidelines or any other law in force, parties shall have rights and obligations that are co-extensive with rights and obligations of parties under the Indian Contract Act, 1872.
- (4) The agreement shall be made in writing, describing the material terms of participation and shall:-
- (a) not compel or induce the direct seller to purchase goods or services in an amount that exceeds an amount that can be expected to be sold to consumers within a reasonable period of time;
- (b) allow or provide the direct seller a reasonable cooling-off period in which to cancel participation and receive a refund for goods or services purchased;
- (c) allow for the termination of contract, with reasonable notice, in such instances and on such terms where a direct seller is found to have made no sales of goods or services for a period of up to two years since the contract was entered into, or since the date of the last sale made by the direct seller;
- (d) allow or provide for a buy-back or repurchase policy for currently marketable goods or services sold to the direct seller at the said direct seller's request at reasonable terms.

Certain obligations of Direct Sellers.

6. (1) Direct Seller engaged in direct selling should carry their identity card and not visit the customer's premises without prior appointment/approval.
- (2) Direct Seller shall ; -
- (a) at the initiation of a sales representation, without request, truthfully and clearly identify themselves, the identity of the direct selling entity, the nature of the goods or services sold and the purpose of the solicitation to the prospective consumer;
- (b) offer a prospective consumer accurate and complete explanations and demonstrations of goods and services, prices, credit terms, terms of payment, return policies, terms of guarantee, after-sales service;
- (c) provide the following information to the prospect/ consumers at the time of sale, namely: -
- (i) name, address, registration number or enrollment number, identity proof and telephone number of the direct seller and details of direct selling entity;
- (ii) a description of the goods or services to be supplied;
- (iii) explain to the consumer about the goods return policy of the company in the details before the transaction;

- (iv) the order date, the total amount to be paid by the consumer along with the bill and receipt;
- (v) time and place for inspection of the sample and delivery of good;
- (vi) information of his/her rights to cancel the order and/ or to return the product in saleable condition and avail full refund on sums paid;
- (vii) details regarding the complaint redressal mechanism;
- (3) A direct seller shall keep proper book of accounts stating the details of the products, price, tax and the quantity and such other details in respect of the goods sold by him/her, in such form as per applicable law.
- (4) A direct seller shall not: -
 - (a) use misleading, deceptive and/ or unfair trade practices;
 - (b) use misleading, false, deceptive, and/ or unfair recruiting practices, including misrepresentation of actual or potential sales or earnings and advantages of Direct Selling to any prospective direct seller, in their interaction with prospective direct sellers;
 - (c) make any factual representation to a prospective direct seller that cannot be verified or make promise that cannot be fulfilled;
 - (d) present any advantages of Direct Selling to any prospective direct seller in a false and/ or a deceptive manner.
 - (e) knowingly make, omit, engage, or cause, or permit to be made, any representation relating to the Direct Selling operation, including remuneration system and agreement between the Direct Selling entity and the direct seller, or the goods and services being sold by such direct seller which is false and/ or misleading;
 - (f) require or encourage direct sellers recruited by the first mentioned direct seller to purchase goods and / or services in unreasonably large amounts;
 - (g) provide any literature and / or training material not restricted to collateral issued by the Direct Selling entity, to a prospective and/ or existing direct sellers both within and outside the parent Direct Selling entity, which has not been approved by the parent Direct Selling entity;
 - (h) require prospective or existing direct sellers to purchase any literature or training materials or sales demonstration equipment.

Relationship between Direct Selling Entity and Direct Seller.

- 7. (1) The relationship between Direct Selling entity and Direct Seller shall be determined as per the written agreement between the parties which shall contain the rights and obligations that are expressly provided as conditions for the conduct of Direct Selling business as well as provide for the obligation of the direct selling entity and the direct seller in terms of these guidelines.
- (2) All other rights and obligations shall be determined as per the express terms of written agreement between a Direct Selling entity and Direct Seller.

- (3) The Direct Selling entity will be liable for grievances arising out of sale of products, services or business opportunity by its Direct Sellers.
- (4) It will be the responsibility of the Direct Selling entity to monitor and control the practices/ methods adopted by the Direct Sellers.

**Conduct for the
Protection of consumer.**

- 8. (1) Direct Sellers and Direct Selling Entity shall take appropriate steps to ensure the protection of all private information provided by a consumer.
- (2) Direct Sellers and Direct Selling Entity shall be guided by the provision of the Consumer Protection Act 1986.
- (3) All complaints received over phone, email, website, post and walk-in should have a complaint number for tracing and tracking the complaint and record time taken for redressal.
- (4) Every Direct Selling company shall constitute a Grievances Redressal Committee whose composition, nature of responsibilities shall include but not limited to:
 - (a) the Grievances Redressal Committee shall consist of at least three officers of the Direct Selling entity
 - (b) the Grievances Redressal Committee shall address complaints and inform complainants of any action taken;
 - (c) complaints may be made by any member of the general public against a Direct Seller of the Company or employee or any other officer of the entity;
 - (d) all such grievances will be resolved directly by the Direct Selling Entity;
- (5) The direct selling entity shall provide information to the consumer upon purchase which shall contain :
 - (a) the name of the purchaser and seller;
 - (b) the delivery date of goods or services;
 - (c) procedures for returning the goods; and
 - (d) warranty of the goods and exchange/ replacement of goods in case of defect:

Provided that no Direct Seller shall, in pursuance of a sale, make any claim that is not consistent with claims authorized by the Direct Selling Entity;
- (6) Any person who sells or offers for sale, including on an e-commerce platform/ marketplace, any product or service of a Direct Selling Entity must have prior written consent from the respective Direct Selling Entity in order to undertake or solicit such sale or other.

**Prohibition of Pyramid
Scheme & Money
Circulation Scheme**

- 9. (1) No person or entity shall promote a Pyramid Scheme, as defined in sub-clause (K) of clause 2 or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing Direct Selling business;

- (2) No person or entity will participate in Money Circulation Scheme, as defined in sub-clause (l) of clause 2 in the garb of Direct Selling of Business Opportunities.

**Appointment of
Monitoring Authority**

10. (1) The Nodal department to deal with the issues related to Direct Selling will be Department of Consumer Affairs at the Union and the respective State Governments in the States;
- (2) The State Governments will also set up a mechanism to monitor/ supervise the activities of Direct Sellers. Direct Selling Entity regarding compliance of the guidelines for Direct Selling;
- (3) Any direct selling entity conducting direct selling activities shall submit an undertaking to the Department of Consumer Affairs, stating that it is in compliance with these guidelines and shall also provide such details of its incorporation and other business details as may be notified from time to time.

**S.K SHILAL, IAS
Secretary
FCS & C.A Department**

DECLARATION BY DIRECT SELLING ENTITIES/COMPANIES**PROFORMA****PART-A**

1.	(i) Name of the Company (As Registered) (ii) CIN No: (iii) Name and address of Directors on Board (enclose details)	
2.	DETAILS OF REGISTRATION (WITH JURISDICTION) (a) Address of Registered Office (Enclosed copy of Registration Certificate): (b) Email: (c) Telephone Nos: (d) Company website: (e) Details of other registration (with jurisdiction), if any (attach copy of Registration Certificate) (f) Type of entity(Private, Public,Trust, Ltd. Etc)	
3.	HEAD OFFICE (a) Address (b) E-mail (c) Details of Key Management Personnel as per registration under the Companies Act: (d) Details of Regional Offices: (e) Nodal Officer for interacting with D/o Consumer Affairs; (Name, designation, Tel No., e-mail, Fax, mobile No.)	
4.	Whether anyone from the Management was convicted by any court in the past within the past 5 years (from the date of application). If so, the details thereof;	
5.	Whether direct selling is of Products or services of both?	
6.	Details of License(S), Trade Mark or Principal Brand which identifies the company:	
7.	I. Address/ Telephone Nos. e-mail etc. of Consumer Care & Grievance Redressal Cells (HQ & Branches). II. Details of Consumer Grievances Redressal Committee as per guidelines: a. Member Name, Phone no. & e-mail. b. Member Name, Phone no. & e-mail. c. Member Name, Phone no. & e-mail.	

PART B

(Direct Selling Business Details)

8.	Details of Products/Services offered (Give link of websites)	Yes/No
9.	<p>Please confirm the following about your direct selling scheme:-</p> <p>(a) It has no provision that a Direct Seller will receive remuneration or incentives for the recruitment/enrolment of new participants and provide that direct sellers will received remuneration derived only from the sale of goods or services.</p> <p>(b) It does not require a participant to purchase goods or services:</p> <p>i. for an amount that exceeds an amount for which such goods or services can be expected to be sold or resold to consumers;</p> <p>ii. for a quantity of goods or services that exceeds an amount that can be expected to be consumed by, or sold or resold to consumer;</p> <p>(b) It does not require a participant to pay any entry/registration fee, cost of sales demonstration equipment and materials or other fees relating to participation;</p> <p>(d) It provides a participant with a written contract describing the “materials terms” of participant;</p> <p>(e). It allows or provides for a participant a reasonable cooling-off period to participate or cancel participation in the scheme and receive a refund of any consideration given to participate in the operations;</p> <p>(f). It allows or provide for a buy-back or repurchase policy for “currently marketable” goods or services old to the participant at the request of the participant at reasonable terms:</p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>
	<p>Note: 1. Give details in regard to the above in an enclosure.</p> <p>2. In case any of the answers in this para is “No”, please provide full details with reasons in an enclosure.</p>	
10.	<p>(a). Whether proper identity document(s) to all the Direct Sellers are issued.</p> <p>(b). Whether you maintain “Register of Direct Sellers” wherein relevant details of each enrolled Direct seller is updated and maintained with details including verifiable proof of address , proof of identity and PAN as per the Income Tax Act.</p> <p>(c). What is the mechanism for payment of VAT? Give details</p>	<p>Yes/No</p> <p>Yes/No</p>
11.	<p>(a). The website is proper and updated regularly with all relevant details, contact information, details pertaining to management, products, product information and compliant redress mechanism for direct sellers and consumers.</p> <p>(b). There are arrangement for registering consumer complaints online or otherwise and grievances are resolved within 45 days of date of making such complaints. Details to be provided.</p>	<p>Yes/No</p> <p>Yes/No</p>
12.	Notes/Remarks, if any.	

Part-C

(UNDERTAKING)

I/We,.....in the capacity of.....of the..... company/
firm declare that we are complaint with the following:

- (a). We do not promote a Pyramid scheme, as defined in sub-clause (k) or clause 2 or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the grab of doing Direct Selling business.
- (b). We do not participate in Money Circulation Scheme, as defined in sub-clause (l) of clause (2) in the garb of Direct Selling of Business Opportunities.
- (c). We are compliant with all the remaining aspects mentioned in the guidelines issued vide F.No. 21/18/2014-IT (Vol-II) dated 9th September, 2016 by the Department of Consumers, Ministry of Consumer Affairs, Food and Public Distribution and shall also provide such details as may be notified from time to time.

Place:

Sd/-

SEAL OF THE COMPANY

Name.....
Designation.....
Tel.No.....
E-mail.....

List of documents to be provided:

1. Certificate of Registration/Bye-laws/Memorandum of Association
2. List of Board of Directors, with contact details.
3. Brief details of direct selling scheme and compensation plan
4. Sample of contract with direct sellers/ distributors.